

## **Rule 65. Injunctions And Temporary Restraining Orders.**

(a) Preliminary Injunction. (1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating the Hearing with the Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order. (1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry not to exceed 14 days that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) Motion to Dissolve. On 2 days' notice to the party who obtained the order without notice or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only

if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Neither the State of Arkansas, its officers, nor its agencies are required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail?and not by referring to the complaint or other document?the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties? officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with the parties and the parties? officers, agents, servants, employees, and attorneys.

Reporter's Notes to Rule 65: - 1. Rule 65 marks a significant departure from FRCP 65. Whereas the latter makes a distinction between preliminary injunctions and temporary restraining orders, this rule treats them equally insofar as the procedures are concerned for obtaining either remedy. Thus, where it appears from affidavit or verified complaint that irreparable harm will or might result, the court has the authority to issue a preliminary injunction or temporary restraining order without notice to the opposing party. Under FRCP 65, notice is always a requirement for the issuance of a preliminary injunction.

2. This rule (a)(1) is generally in accord with prior Arkansas law. Superseded Ark. Stat. Ann. 32-201 (Repl. 1962) provided that the court could direct that reasonable notice be given to the party against whom an injunction was sought. Superseded Ark. Stat. Ann. 32-202 (Repl. 1962) required mandatory notice when a defendant had already answered and superseded Ark. Stat. Ann. 32-103 (Repl. 1962) provided for the issuance of a temporary injunction without notice in certain instances as where irreparable harm was threatened. However, superseded Ark. Stat. Ann. 32-203 (Repl. 1962) provided that in a number of specific instances, notice was required on an application for a preliminary injunction. This rule (a)(1) is designed to simplify prior Arkansas law by providing for the issuance of a preliminary injunction or temporary restraining order without notice only where it appears that irreparable harm or injury will or might result. In all other instances, notice of such application is required. Rule (a)(2) requires prior notice and a bond before a preliminary restraining order or injunction may be effective as against designated businesses.

3. Section (b) is designed to afford a hearing to the person against whom an injunction or temporary restraining order has been issued without notice. Substantial rights are often affected and for this reason, such hearings should be heard as expeditiously as possible. Where the hearing is held on the right of the applicant to have an injunction or restraining order issued, the court may delay the hearing until the entire case can be heard on the merits. Where harm may result, however, from such delay, the better practice is to proceed with the

hearing on such application.

4. Section (d) deviates substantially from the security provisions of the Federal Rule and also changes prior Arkansas law. Under this rule, the trial court is vested with discretion to determine when security is required and the amount of such security when required. Both FRCP 65 and superseded Ark. Stat. Ann. 32-206 (Repl. 1962) require the posting of adequate security as a condition precedent to the issuance of a preliminary injunction; therefore, this section does modify prior Arkansas law. Under this rule, preliminary injunctions and temporary restraining orders are placed on equal footing and since the trial court is in the best position to know whether security should be required, it is given the discretion to make such a determination.

5. Section (e) is identical to FRCP 65(d) and is designed to insure specificity in the drafting of injunctions and restraining orders. The intent is to insure that there is no doubt or confusion as to the conduct enjoined or restrained. Likewise, this section makes clear the identity of all persons who are bound by the injunction or order. This provision should have little effect on Arkansas practice and procedure.

6. Section (e) of FRCP 65 is omitted and Section (f) is added to this rule. The latter section simply provides that disobedience of any injunction or order may be treated as a contempt by the court. Prior Arkansas law in this area was codified as superseded Ark. Stat. Ann. section 32-401 (Repl. 1962) although it is doubtful that specific statutory authority was necessary to enable the court to punish one for violating the terms of an injunction or restraining order.

Addition to Reporter's Notes, 2011 Amendment: Rule 65 has been completely rewritten and is now substantially identical to Federal Rule 65 as amended in 2009. Rule 65 as adopted in 1979 departed significantly from the corresponding federal rule. Contrary to the approach of the federal rule and that of most states, the original Arkansas Rule 65 treated preliminary injunctions and temporary restraining orders as equivalent, allowing issuance of either without notice to the adverse party. Subsections (a) and (b) of the amended rule provide for issuance of a temporary restraining order without notice to the adverse party but require notice to the adverse party prior to issuance of a preliminary injunction.

The amendment eliminates former subsection (a)(2) that limited the availability of ex parte injunctive relief in some circumstances. The revised rule provides a number of enhanced procedural protections for persons or entities against whom ex parte injunctive relief is sought, including: that an affidavit or verified complaint state specific facts showing the harm that will result to the movant before the adverse party can be heard; that the movant's attorney certify in writing any efforts made to give notice and why notice should not be required; that a temporary restraining order issued without notice describe the circumstances underlying its issuance; that the temporary restraining order must expire not later than 14 days after entry unless for good cause or with the adversary's consent it is extended; and that the hearing on the temporary restraining order be set for the earliest possible time and take precedence over other matters. In addition, the party against whom the order is issued may appear and move to dissolve or modify the order upon 2 days' notice to the party who obtained the temporary restraining order without notice.

In subsection (c) the amended rule conditions issuance of a preliminary injunction or temporary restraining order on the movant's giving security determined by the court and section (d)(1) prescribes the contents of the injunction or restraining order. Subsection (d) specifies the persons bound by the order.

**Associated Court Rules:**

Rules of Civil Procedure

**Group Title:**

VIII. Counsel; Provisional and Final Remedies; Suits in Forma Pauperis

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